

Letters

C.I.A. Has a Right to Complain Against ABC

To the Editor:

I want to register my extreme distress over your editorial "Mugging a Network" (Dec. 5), concerning the Central Intelligence Agency's complaint against ABC [regarding two news reports about C.I.A. ties to a Hawaii investment house allegedly involved in shipping arms to Taiwan and accusations of an assassination plot].

With the restraint and reason of a frenzied mob heading for the courthouse with torches and kerosene, you accuse the Federal Communications Commission of a "plot to commit intimidation," holding "a dagger to the network's throat for months" while we "dawdle" over the pleadings.

Without going into the merits, the C.I.A.'s complaint raises a "fairness doctrine" claim, a related personal-attack issue and an allegation of news distortion. As with the thousands of such complaints filed each year, the F.C.C. assigns them to staff attorneys to review their legal sufficiency. This review period runs six to eight weeks, and the staff will have a decision in this matter within that time.

As to the standing of the C.I.A. before the F.C.C., I agree that the commission's policies should not be shortcuts for libel or slander lawsuits. But the fairness doctrine generally concerns issues; and the same issues raised by the C.I.A.'s complaint could be brought by a private individual. Should its Government status preclude a look at the allegations? If a state environmental agency were to raise a fairness issue on a program about air pollution, would that complaint be stillborn because it emanated from a Government source?

I have instructed the Mass Media Bureau to handle the C.I.A. complaint without fear or favor. To give it

"special handling" in any way, including the one proposed by you, taints our processes. No prior restraint is in effect, and broadcasters have learned to endure this process.

My distaste for this process is a matter of public record since I took office in 1981. But so long as the fairness doctrine and related content regulations are on the books, I will enforce them. That is my oath of office, appeals for instant justice notwithstanding.

MARK S. FOWLER

Chairman

Federal Communications Commission
Washington, Dec. 5, 1984

Backdoor Libel Suit

To the Editor:

The complaint against ABC that the C.I.A. has filed with the F.C.C. raises important constitutional and other legal questions. However, in view of the relief asked by the C.I.A. in its complaint, it appears to me that much of the discussion has been wide of the mark, particularly since primary attention is given to the "fairness doctrine" embodied in Section 315 of the Federal Communications Act.

In the ABC broadcast that triggered the controversy, one Scott Barnes stated that the C.I.A. had asked or directed him to assassinate one Ronald Rewald, a Honolulu investment counselor. That is certainly a controversial statement and one damaging to the reputation of the C.I.A. The fairness doctrine would give those in disagreement with or offended by the statement a right to demand from ABC a reasonable opportunity to broadcast a reply. But the C.I.A.'s complaint makes no such request, and ABC has declared itself

ready to give the C.I.A. opportunity to broadcast a reply. It appears, therefore, that no issue under the fairness doctrine has been raised.

The relief actually requested by the C.I.A. is that the F.C.C. conduct an investigation of ABC to determine whether or not the network had acted with "reckless disregard for the truth" and, if so, to prescribe an appropriate penalty, such as a monetary fine or revocation of ABC's broadcasting licenses.

The Director of Central Intelligence, William J. Casey, has also asked the F.C.C. to order ABC to retract "all false allegations." The F.C.C. has no power to do any such thing, and under the Constitution no one can be forced to disavow any assertion on an issue such as the C.I.A.'s conduct of its affairs.

The C.I.A.'s complaint must be regarded as directed toward ABC's discharge of its responsibilities as a licensee of broadcasting stations. The F.C.C. has on many occasions received, considered and acted upon such challenges to licensees from non-governmental sources, both individual and corporate, and many of them have involved the content of broadcasts. A Southern station, for example, was penalized for refusing to have blacks appear on its programs.

Is there any reason why a complaint from a Federal agency such as the C.I.A. should not be considered by the F.C.C.? It is certainly not unheard of for one agency to appear before another, and indeed the Department of Justice has on more than one occasion taken a position before the F.C.C. on issues such as the impact of the antitrust laws on broadcast licensing. Consequently, it does not appear to me that the mere fact that the complaint emanates from a Government agency should bar the F.C.C. from considering it.

However, the C.I.A. complaint, insofar as it seeks to penalize ABC for a statement critical of a Government agency, raises important issues under the First Amendment. While this is neither a civil libel suit nor a criminal prosecution for seditious libel, in practical effect it is dangerously close to both, as Floyd Abrams pointed out ("C.I.A. Complaint Raises First Amendment Issue," Nov. 26). In libel suits and perjury prosecutions courts may be obliged to determine the truth or falsity of statements, but it would be most unfortunate if a broadcast-licensing agency such as the F.C.C. should undertake such a responsibility.

ABC has publicly admitted that it has no reason to doubt the C.I.A.'s denial that it told Scott Barnes to assassinate Ronald Rewald. Unless there is something in this occurrence that casts substantial doubt on ABC's qualifications to continue as a broadcast licensee, it appears to me that ABC's admission should be the end of the matter.

TELFORD TAYLOR

New York, Nov. 29, 1984

The writer is a former general counsel of the Federal Communications Commission.